

1 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because
2 the conduct at issue occurred in this District, Plaintiff resides in this District, and
3 Defendant conducts substantial business in this District.

4 **PARTIES**

5 4. Plaintiff is a resident of Scottsdale, Arizona. Plaintiff is a “person” as defined
6 by 47 U.S.C. § 153(39).

7 5. Defendant is a foreign corporation organized and existing under the laws of
8 the state of Rhode Island, with its principal office located at One CVS Drive, Woonsocket,
9 Rhode Island, 02895. Defendant is authorized to, and does, conduct business in the state of
10 Arizona. Defendant has appointed CT Corporation System as its agent, located at 3800 N
11 Central Avenue, Suite 460, Phoenix, Arizona 85012. Defendant is a “person,” as defined by
12 47 U.S.C. § 153(39).

13 **PLAINTIFF’S FACTUAL ALLEGATIONS**

14 6. At all times herein relevant, Plaintiff utilized a cellular telephone service
15 and was assigned the telephone number ending in “6525”.

16 7. On or about December 30, 2016, Plaintiff went to a CVS pharmacy located
17 at 9000 E Indian Bend, Road, Scottsdale, Arizona to pick up some prescription
18 medications.

19 8. While in the process of paying for said prescription medications, Plaintiff
20 was asked on the point of sale customer display screen whether he consented to
21 Defendant’s communicating with him by way of text message.

22 9. Only two options were displayed upon the point of sale customer display
23 screen: “Yes” and “Skip.”

24 10. Plaintiff did not wish to consent to Defendant’s communicating with him by
25 way of text message and explicitly communicated such to Defendant’s agent facilitating
26 the sale of the prescription medications.

27 11. Defendant’s agent instructed Plaintiff to choose “Skip” on the point of sale
28 customer display screen; Plaintiff did so.

1 12. On or about May 30, 2017, Plaintiff went to a CVS pharmacy located at
2 4140 County Road 101 N, Plymouth, Minnesota 55446 to pick up a prescription
3 medication.

4 13. While in the process of paying for said prescription medication, Plaintiff
5 was asked on the point of sale customer display screen whether he consented to
6 Defendant's communicating with him by way of text message.

7 14. Only two options were displayed upon the point of sale customer display
8 screen: "Yes" and "Skip."

9 15. Plaintiff did not wish to consent to Defendant's communicating with him by
10 way of text message and explicitly communicated such to Defendant's agent facilitating
11 the sale of the prescription medications.

12 16. Defendant's agent instructed Plaintiff to choose "Skip" on the point of sale
13 customer display screen; Plaintiff did so.

14 17. Despite being actually aware that Plaintiff did not consent to Defendant's
15 communication with him by way of text message, Defendant sent Plaintiff numerous text
16 messages relating to his prescription medications.

17 18. On or about June 18, 2017, Plaintiff contacted Defendant via telephone and
18 reiterated once again that he did not consent to Defendant's communicating with him by
19 way of text message.

20 19. From December 30, 2016, to August 29, 2018, Defendant sent Plaintiff 133
21 separate text messages relating to his prescription medications, each in violation of 47
22 U.S.C. § 227(b)(1).

23 20. Each of the 137 text messages Defendant sent to Plaintiff were sent by
24 means of an automatic telephone dialing system, as such is defined by 47 U.S.C. §
25 227(a)(1). *See also, Marks v. Crunch San Diego, LLC*, 904 F.3d 1041, 1052 (9th Cir.
26 2018).

27 21. Each of the 137 text messages Defendant sent to Plaintiff stated a variation
28 of the following:

- **"Kevin, your Rx order is ready."**

- **“Kevin, your pharmacist filled” your “prescriptions for you at CVS pharmacy.”**
- **“Would you like to refill” your prescriptions?**
- **“Kevin, your Rx” is “pending insurance approval.”**
- **“Kevin, your Rx” is “too soon to fill.”**
- **“Kevin, you have... Rx due for refill.”**
- **“Kevin, Rx... is out of refills.”**
- **“Kevin, did you know today is the last day to pick up your prescription order from CVS Pharmacy?”**
- **“Kevin, ... the Rx your pharmacist filled for you at CVS will be returned.”**
- **“Kevin, your Dr. did not authorize a request to refill your Rx”**
- **“You can now refill by text with our new refill reminders.”**

22. Of the 137 text messages Defendant sent to Plaintiff, some were sent on the same day.

23. Defendant sent Plaintiff three text messages on December 30, 2016; two text messages on February 9, 2017; two text messages on February 17, 2017; two text messages on March 6, 2017; three text messages on June 5, 2017; two text messages on August 2, 2017; three text messages on August 28, 2017; two text messages on November 20, 2017; two text messages on November 21, 2017; two text messages on April 24, 2018; two text messages on April 27, 2018; two text messages on May 1, 2018; and two text messages on July 30, 2018.

24. Moreover, Defendant consistently sent Plaintiff more than three text messages per week.

25. From December 30, 2016, to January 6, 2017, Defendant sent Plaintiff five text messages.

26. From March 1, 2017, to March 6, 2017, Defendant sent Plaintiff four text messages.

27. From March 29, 2017, to April 6, 2017, Defendant sent Plaintiff six text messages.

28. From June 1, 2017, to June 5, 2017, Defendant sent Plaintiff five text messages.

1 29. From June 8, 2017, to June 21, 2017, Defendant sent Plaintiff seven text
2 messages.

3 30. From July 19, 2017, to August 2, 2017, Defendant sent Plaintiff nine text
4 messages.

5 31. From August 25, 2017, to September 24, 2017, Defendant sent Plaintiff 13
6 text messages.

7 32. From November 20, 2017, to November 21, 2017, Defendant sent Plaintiff
8 four text messages.

9 33. From January 23, 2018, to February 1, 2018, Defendant sent Plaintiff eight
10 text messages.

11 34. From February 26, 2018, to March 5, 2018, Defendant sent Plaintiff four
12 text messages.

13 35. From April 20, 2018, to May 7, 2018, Defendant sent Plaintiff nine text
14 messages.

15 36. Of the 137 text messages Defendant sent to Plaintiff, 133 failed to include
16 an easy means to opt out of receiving such future text messages.

17 37. Defendant's conduct in violation of the TCPA caused Plaintiff to
18 unnecessarily expend significant time and effort and caused him a significant amount of
19 annoyance and frustration.

20 **CAUSES OF ACTION**

21 **COUNT I.**

22 **VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT - 23 47 U.S.C. § 227 *et seq.***

24 38. Plaintiff incorporates by reference all foregoing paragraphs as if fully stated
25 herein.

26 39. The TCPA prohibits Defendant from sending Plaintiff text messages by
27 means of an automatic telephone dialing system, except for emergency purposes or with
28 Plaintiff's express consent. *See*, 47 U.S.C. § 227(b)(1).

1 40. Defendant utilized an automatic telephone dialing system to send Plaintiff
2 text messages regarding his prescription medications, non-emergency purposes and
3 without Plaintiff's consent, on 133 separate occasions, in violation of 47 U.S.C. §
4 227(b)(1).

5 41. Defendant's foregoing acts and omissions constitute numerous and multiple
6 knowing and/or willful violations of 47 U.S.C. § 227(b)(1).

7 42. Accordingly, Plaintiff is entitled to an award of \$1,500.00 in statutory
8 damages per each violation of the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(C).

9 43. Alternatively, Defendant's foregoing acts and omissions constitute
10 numerous and multiple negligent violations of 47 U.S.C. § 227(b)(1).

11 44. Accordingly, Plaintiff is entitled to an award of \$500.00 in statutory
12 damages per each violation of the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B).

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiff prays for relief as follows:

- 15 • Statutory damages of \$500.00 for each text message determined to be in violation
16 of the TCPA, pursuant to 47 U.S.C. § 227(b)(3);
17 • Treble damages for each violation determined to be willful and/or knowing under
18 the TCPA, pursuant to 47 U.S.C. § 227(b)(3); and
19 • For such other and further relief as may be just and proper.

20 **TRIAL BY JURY**

21 Plaintiff is entitled to, and hereby demands, a trial by jury. US Const. amend.
22 VII; Fed. R. Civ. Pro. 38.
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1 Dated this 26th day of March 2019.

Respectfully submitted,

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4 By: /s/ Paul B. Mengedoth

Paul B. Mengedoth, Esq. (018507)

MENGEDOTH LAW PLLC

20909 N. 90th Place, Suite 211

Scottsdale, AZ 85255

Tel: (480) 778-9100

E-mail: paul@mengedothlaw.com

8 Thomas J. Lyons, Esq.

(Pro hac vice application pending)

LYONS LAW FIRM, P.A.

367 Commerce Court

Vadnais Heights, MN 55127

Telephone: (651) 770-9707

Facsimile:(651)770-5830

tlyons@lyonslawfirm.com

14 Thomas J. Lyons, Jr., Esq.

(Pro hac vice application pending)

CONSUMER JUSTICE CENTER, P.A.

367 Commerce Court

Vadnais Heights, MN 55127

Telephone: (651) 770-9707

Facsimile:(651)704-0907

tommy@consumerjusticecenter.com

Attorneys for Plaintiff